

United States District Court
Northern District of Texas
Dallas Division

CITY OF DALLAS,

Plaintiff

v.

CASE NO. 3:23-CV-02367-K

TRIPLE D GEAR, LLC,

Defendant

Defendant’s Rule 12(b)(6) Motion for Partial Dismissal and Brief in Support

Defendant Triple D Gear, LLC files this Motion seeking dismissal of Plaintiff City of Dallas’s third claim for relief¹ under Rule 12(b)(6). To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.”² “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”³ “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”⁴ Rule 8 requires more than “labels and conclusions.”⁵

The City’s Complaint requests cancellation of two Triple D trademark registrations the City alleges Triple D fraudulently obtained.⁶ A claim of fraud against the Patent and Trademark Office (“PTO”) in connection with a trademark registration requires proof of: (1) a false representation of a material fact; (2) knowledge or belief that the representation was false; (3) an intent to

¹ The City does not denominate its claims by number, like Count 1, but the claim Triple D seeks to dismiss is the City’s third “claim for relief.”

² *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

³ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

⁴ *Id.* at 678 (citation omitted).

⁵ *Id.*

⁶ Dkt. #1 at 23, at ¶¶ 90-93. The City’s fraud claim seeks cancellation of U.S. Trademark Registration Nos. 4,586,688 and 6,330,048.

induce the PTO to act in reliance on the misrepresentation; (4) reasonable reliance by the PTO on the misrepresentation; and (5) damage from such reliance.⁷ To succeed on a claim of fraudulent registration, the challenging party thus must prove by clear and convincing evidence that the applicant made false statements with the intent to deceive the PTO.⁸ “[A]bsent the requisite intent to mislead the PTO, even a material misrepresentation would not qualify as fraud under the Lanham Act warranting cancellation.”⁹

The City’s Complaint does not include even a conclusory recitation of the intent to deceive element. For this reason alone, the Complaint fails to state a claim for fraud and the City’s third claim for relief should be dismissed.¹⁰

CONCLUSION

For the forgoing reasons, Triple D respectfully requests that the Court grant its Motion and dismiss the City’s third claim for relief under Rule 12(b)(6).

⁷ *Texas Pig Stands, Inc. v. Hard Rock Café Int’l, Inc.*, 951 F.2d 684, 693 n.14 (5th Cir. 1992); *see also Texas Int’l Prop. Assocs. v. Hoerbiger Holding AG*, 624 F. Supp. 2d 582, 592 (N.D. Tex. 2009) (Kinkeade, J.).

⁸ *Hoerbiger Holding*, 624 F. Supp. 2d at 592 (citing *Meineke Disc. Muffler v. Jaynes*, 999 F.2d 120, 126 (5th Cir. 1993)); *see also Good Gov’t v. Coal. for Better Gov’t*, 901 F.3d 498, 507 (5th Cir. 2018); *Dennis Pierce, Inc. v. Pierce*, 735 F. App’x 144, 145 (5th Cir. 2018).

⁹ *In re Bose Corp.*, 580 F.3d 1240, 1243 (Fed. Cir. 2009).

¹⁰ *Glob. Healing Ctr., LP v. Powell*, No. 4:10-CV-4790, 2012 WL 1709144, at *6 (S.D. Tex. May 15, 2012) (Ellison, J.) (dismissing fraud on PTO counterclaim for failure to allege intent to mislead); *see also Yeti Coolers, LLC v. Bapex Int’l, LLC*, No. 1:19-CV-783-RP, 2020 WL 2114385, at *2-3 (W.D. Tex. May 4, 2020) (Hightower, M.J.) (granting Rule 12(f) motion to strike fraud on PTO inequitable conduct defense for failure to allege element of intent).

December 29, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies this document was filed electronically in compliance with Local Rule 5.1. As such, it was served on all counsel of record on December 29, 2023.

/s/ Casey Griffith

Casey Griffith